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## The Protection of Religious Freedom by the National Constitution and by Human Rights Treaties in the Republic of Argentina<sup>1</sup>

Octavio Lo Prete\*

### I. RELIGION IN ARGENTINE SOCIETY

Argentina is a religious society with long-held faith in God. This religious tradition has been a characteristic of the Argentine people since the beginning. To this day, nearly two hundred years after the start of Argentina's march toward independence, religion continues to be a crucial part of Argentine life.

A recent study by an accredited scientific organization and several of the nation's leading universities is quite revealing on this matter.<sup>2</sup> According to the study, 91.1% of those surveyed said they "believe in God,"<sup>3</sup> and they defined their religious affiliations as follows: Catholic (76.5%), Evangelical (9%),<sup>4</sup> Jehovah's Witness

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1. Work presented at the Fifteenth Annual International Law & Religion Symposium, hosted by the J. Reuben Clark Law School at Brigham Young University, Provo, Utah, USA; the theme for the symposium was "International Protection of Religious Freedom: National Implementation."

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2. CENTRO DE ESTUDIOS E INVESTIGACIONES LABORALES (CEIL) OF THE CONSEJO NACIONAL DE INVESTIGACIONES CIENTÍFICAS Y TÉCNICAS (CONICET), PRIMERA ENCUESTA SOBRE CREENCIAS Y ACTITUDES RELIGIOSAS EN ARGENTINA (2008), available at <http://www.culto.gov.ar/encuestareligion.pdf>. The University of Buenos Aires, the National University—Rosario, the National University—Cuyo, and the National University—Santiago del Estero also participated in the study. The national study included 2403 cases, with a margin of error of +/- 2% and a 95% confidence level. The survey results were presented on August 26, 2008, in the Argentine Chancellery (Ministry of Foreign Relations, International Commerce, and Religion). It must be noted that the last national census which included information on the religious identities of the Argentine population was taken in 1960.

3. *Id.* at 4. In the survey, 4.9% responded "no," meaning that the individual surveyed did not believe in God, and 4.0% said that they "doubt" or "sometimes believe." *Id.*

4. In the survey, 7.9% of those listed as "Evangelical" were defined as "Pentecostal" and the rest as Baptist, Lutheran, Adventist, or belonging to the "*Iglesia Universal del Reino de Dios*" (IURD) [Universal Kingdom of God Church]. *Id.* at 6.

(1.2%), Mormon (0.9%), and other religions (1.2%). The remaining 11.3% of respondents claimed to be “indifferent.”<sup>5</sup>

Despite evidence of the advance of a worldwide culture encouraging the exclusion of religion from society, or in other words, one that objects to the public presence of anything related to a belief in a faith, this study reveals that Argentina remains a religious society that believes in God.<sup>6</sup> The data also support the idea that Argentina is dominated by a Christian culture, with Jesus at the top of the “ranking” of beliefs.<sup>7</sup> That is, 91.8% of those surveyed claim to believe “much or somewhat” in Jesus Christ, with 84.8% believing in the Holy Ghost, 80.1% in the Virgin Mary, 78.2% believing in angels, 76.2% believing in Saints, and 64.5% believing in energy.<sup>8</sup>

However, we must note that the survey also reveals the existence of a complex process of religious deinstitutionalization. This is confirmed by the fact that more than half of the population says that they relate to God “without intermediaries,” and also by the fact that a large majority of the population exhibits a certain discrepancy between their own conscience and the official doctrine upheld by the religion to which they claim to belong—especially when it comes to controversial topics such as abortion, sex education in schools, the use of contraceptives, and women in the priesthood.<sup>9</sup> This religious deinstitutionalization was highlighted by responses concerning attendance at religious ceremonies. Of the respondents, 76% reported that they either “seldom” or “never” visit places of worship, while only 23.8% said they attend “very frequently.”<sup>10</sup>

Thus, it is clear that matters of religion can present us with a complex phenomenon; for example, a person may define him or herself as belonging to a particular organized religion and say that he or she frequently attends places of worship, but at the same time chooses to relate to God “on his or her own terms,” and, on certain topics, he or she may believe in his or her own conscience and make decisions contrary to the postulated doctrines of his or her church or religious community. Such a person might explain it as such: “I

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5. Those placed in the “indifferent” category include agnostics, atheists, and those who do not belong to an organized religion. *Id.* at 6.

6. *See id.*

7. *Id.* at 10.

8. *Id.*

9. *Id.*

10. *Id.* at 16.

belong to a religion and attend worship services, but I go when I want to, and there are some teachings of my religion that I do not adhere to.” In short, individuals such as this live their religion “in their own way.”

Finally, the study concludes with the topic of “public confidence in institutions.” This is an especially important topic in a country like Argentina, where the credibility of these institutions, particularly those in the political sphere, has been weak for many decades. In general, all of the percentages were low, but it was a religious institution—the Catholic Church—that had the highest rated confidence level of those surveyed (59%).<sup>11</sup> The remainder of the institutions on the survey were ranked as follows: media (58%), Armed Forces (46%), police (42%), legal system (40%), Evangelical churches (39%), Congress (36%), unions (30%), and lastly, political parties (27%).<sup>12</sup>

## II. RELIGIOUS FREEDOM, THE NATIONAL CONSTITUTION, AND HUMAN RIGHTS TREATIES

The Constitution of Argentina was first adopted in the year 1853.<sup>13</sup> Consistent with Argentina’s religious tradition, this “theistic” constitution invokes the name of God in its preamble.<sup>14</sup> The Constitution’s text also recognizes God’s exclusive dominion over those private actions of men which in no way offend public order or morality, nor injure a third party.<sup>15</sup> Juan Bautista Alberdi, the Argentine political theorist whose writings inspired the creators of the 1853 Constitution, wrote that the invocation of God in the preamble must be made “not in a mystical sense, but rather in a profound political sense.”<sup>16</sup> A noted modern author, Alfonso Santiago, explained that this invocation of God “marks the clear adherence of our Constitution to a theistic and iusnaturalist [natural

11. *Id.* at 28.

12. *Id.*

13. Abelardo Levaggi, *Constitucionalismo Argentino 1810–1850*, IUSHISTORIA No. 2, Oct. 2005, at 1, available at <http://www.salvador.edu.ar/juri/reih/2da/I04.pdf>.

14. CONST. ARG. pmbl.

15. CONST. ARG. § 19.

16. JUAN BAUTISTA ALBERDI, BASES Y PUNTOS DE PARTIDA PARA LA ORGANIZACIÓN POLÍTICA DE LA REPÚBLICA ARGENTINA [BASES AND STARTING POINTS FOR THE POLITICAL ORGANIZATION OF THE ARGENTINE REPUBLIC] (1852), cited in ALFONSO SANTIAGO, RELIGIÓN Y POLÍTICA, SUS RELACIONES CON EL ACTUAL MAGISTERIO DE LA IGLESIA CATÓLICA Y A TRAVÉS DE LA HISTORIA CONSTITUCIONAL ARGENTINA 240 (Ad-Hoc 2007).

law] world view.”<sup>17</sup> Stated another way, the invocation to God serves as “an express acknowledgement of a system of justice that is greater than this document itself and which forms the basis for all of the positive law in our country.”<sup>18</sup> In Santiago’s view, the “theistic adherence of the constitution demonstrates also that the Argentine State is not, nor can be, a totalitarian State that does not recognize the limits of its actions.”<sup>19</sup> Similarly, the Argentine Episcopal Conference expressed the following:

The explicit reference to God reaffirms our most honored roots and gives a sense of our Nation’s “self,” which is born and developed in the faith of the majority. The diverse races and cultures that make up Argentina find their unity in the faith in a Supreme Being. Our regime is theistic, not atheist, nor neutral. Even for the Argentine who does not have faith, religion must be valued as a part of the culture that makes up our Nation.<sup>20</sup>

At the same time, in addition to giving special status to the Catholic Church, to which we will later refer,<sup>21</sup> the Constitution also sets forth the right of every inhabitant, citizen, or foreigner to “profess freely their religion.”<sup>22</sup>

This religious tradition continued as the Constitution underwent its most extensive and important reform in 1994. Among other things, the 1994 reform reinforced the Constitution’s guarantee to all to “profess freely their religion” by conferring constitutional hierarchy “in the full force of their provisions” to relevant human rights conventions and declarations that govern religious freedom, expounding upon and clarifying their contents.<sup>23</sup> The Constitution has always mandated that the national government sustain the Catholic Church.<sup>24</sup> It has also always guaranteed religious freedom.<sup>25</sup>

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17. *Id.*

18. *Id.*

19. SANTIAGO, *supra* note 16, at 240.

20. *Aporte de la Conferencia Episcopal Argentina para la Reforma de la Constitución Nacional*, Mar. 9, 1994, as quoted in 1 ANUARIO ARGENTINO DE DERECHO CANÓNICO § 3, at 2 (1994).

21. *See infra* this Part.

22. CONST. ARG. §§ 14, 20.

23. *Id.* § 22

24. *Id.* § 2 (“The Federal Government sustains the Roman Catholic Apostolic religion.”).

25. *Id.* at §§ 14 (“All the inhabitants of the Nation are entitled to the following rights . . . to profess freely their religion.”), 20 (“Foreigners enjoy within the Territory of the Nation

These sections are not contradictory because the Government can sustain a church without denying others their religious freedoms.

The 1853 Constitution guaranteed religious freedom even as it granted special status to the Catholic Church.<sup>26</sup> Thus, from the very beginning, while the Constitution granted to every inhabitant, citizen, or foreigner the right to “profess freely their religion,”<sup>27</sup> it also stated that “[t]he Federal Government supports the Roman Catholic Apostolic religion.”<sup>28</sup>

The question of religion occupied a distinguished place in the debates prior to ratification of the Constitution of 1853.<sup>29</sup> Even though the delegates to the Constitutional Assembly said they were “Christians and Democrats” (including some who were Catholic priests), they still held diverse opinions concerning the position that the Catholic Church should hold and whether they should recognize religious freedom.<sup>30</sup>

At that time, the Catholic religion was professed by almost the entire population. Declaring Catholicism as the “official” religion would have thus been a natural choice. However, one of the primary objectives of the Assembly was to create an Argentina that was open to immigration,<sup>31</sup> which was needed to populate and develop the nation, and that objective necessitated a guarantee of religious freedom. Juan Bautista Alberdi considered it to be essential that European and North American immigrants come to the country, and many of these were not Catholic. In his work *Bases*, Alberdi expressed:

The dilemma is fatal: we can be exclusively Catholic, or we can be populated and prosper and be tolerant in matters of religion. To call [to Argentina] the Anglo Saxon race and other populations

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all the Civil Rights of citizens; they may . . . practice freely their religion.”), 28 (“The principles, guarantees[,] and rights recognized in the preceding sections shall not be modified by the laws that regulate their enforcement.”).

26. The 1994 amendments did not alter the 1853 text regarding the three sections cited in the previous note.

27. CONST. ARG. § 14; *see also id.* § 20 (“practice freely their religion”).

28. *Id.* § 2.

29. A summary of the debate in the Constitutional Assembly of 1853 can be found in Norberto Padilla, *Ciento Cincuenta Años Después*, in *LA LIBERTAD RELIGIOSA EN LA ARGENTINA; APORTES PARA UNA LEGISLACIÓN* 31–46 (CALIR-KAS 2003), *available at* <http://www.calir.org.ar/libro/04.pdf>, and in SANTIAGO, *supra* note 16, at 236.

30. *Id.*

31. *See* CONST. ARG. § 25.

from Germany, Sweden and Switzerland, and then deny them the exercise of their religion is the same as only inviting them on ceremony, through the hypocrisy of liberalism. This is true to the letter. To exclude those differing religions from South America is to exclude the English, Germans, Swiss, and North Americans who are not Catholic; that is, we would be excluding those settlers that this continent needs most. To bring them here without their religion is to bring them here without the agent that makes them who they are; to make them live without religion; to make them atheist.<sup>32</sup>

Due in large part to Alberdi's arguments, a compromise was made, which created a synthesis that guaranteed religious freedom to all<sup>33</sup> and granted the Catholic Church special status or supremacy.<sup>34</sup> It should be noted, however, that the Church's position of privilege was limited by the constitutional establishment of the Patronato, which subjected the Catholic Church to the civil powers in matters such as the designation of authorities, communication between the hierarchy and the faithful, etc.<sup>35</sup> The delegates to the Constitutional Convention understood the Patronato as a legacy of the Spanish kings, and they judged it appropriate for their national sovereignty. In 1871, José Manuel Estrada, an opponent of the Patronato and advocate of the rights of the Church, argued that the religious freedom of the 1853 Constitution was "contradictory" since it was full and unlimited for all religions except Catholicism, for which it was null.<sup>36</sup> He added that the Patronato "limits religious freedom, attacks its principle and annuls it, and the extension of all of this was

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32. ALBERDI, *supra* note 16, at 74, cited in Horacio R. Bermudez, *La Libertad Religiosa en la Constitución Nacional*, in *LA LIBERTAD RELIGIOSA EN EL DERECHO ARGENTINO* 81–82 (Roberto Bosca & Juan G. Navarro Floria eds., 2007).

33. The policy on open immigration was established not only through the recognition of freedom of worship, but also through specific regulations that consolidated the idea. CONST. ARG. §§ 25, 75, ¶ 18). The Preamble itself designates the Constitution "to all men of the world who wish to dwell on Argentine soil." *Id.* at pmbl.

34. *Id.* § 2.

35. Paul E. Sigmund, *Religious Human Rights in Latin America*, 10 EMORY INT'L L. REV. 173, 174 (1996) (explaining that under the principle of Patronato the sovereign maintained the authority to appoint bishops, while the Church was often given a religious and educational monopoly, as well as large land grants in return).

36. JOSÉ MANUEL ESTRADA, *La Iglesia y el Estado*, in *LA IGLESIA Y EL ESTADO Y OTROS ENSAYOS POLÍTICOS Y DE CRÍTICA LITERARIA* 9, at 36, 41–42 (4th ed. 1945).

all based on a doctrinal error: the right of the State to legislate in religious matters.”<sup>37</sup>

This clause is still in effect today. In 1987, the Argentine Episcopal Conference proposed that the national government adopt the following constitutional language from the Province of Córdoba in order to guarantee freedom to the Catholic Church:

The Argentine Nation, in accordance with its cultural tradition, recognizes and guarantees to the Apostolic Roman Catholic Church, the free and public exercise of its worship. The relationship of this Church and the Federal State is based on the principles of autonomy and cooperation. It also guarantees free and public exercise to other religions, with no further limitations than those prescribed by morals, good customs, and the public order.<sup>38</sup>

The supremacy clause did not confer upon the Catholic Church the characteristics of an official State religion. This fact was emphasized in the 1994 reforms which, for example, removed the requirements that the president and vice president be Catholic and that they swear to the Gospel Saints,<sup>39</sup> or that they uphold the obligation mandated by the National Congress to “keep peace with the Indians, and convert them to Catholicism.”<sup>40</sup> In the *Villacampa* verdict of 1989, the National Supreme Court of Justice expressed that:

Articles 2 [and] 67[,] paragraphs 15, 76[,] and 80, of the National Constitution relate intimately to legislative customs and traditions of the Argentine people, and also, were a consequence of the rights that the State exercised through the Patronato, but they do not mean, however, that the apostolic Roman Catholic religion should disguise the character of official religion of the State nor that its religious guidelines should be consecrated in our statutory law.<sup>41</sup>

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37. *Id.*

38. 1 AADC, APORTE DE LA CONFERENCIA EPISCOPAL ARGENTINA PARA LA REFORMA DE LA CONSTITUCIÓN NACIONAL 260 (1994).

39. CONST. ARG. § 93 (“On assuming office, the President and Vice-President shall take oath before the President of the Senate and before Congress assembled, respecting their religious beliefs, to: ‘perform with loyalty and patriotism the office of President (or Vice-President) of the Nation, and to faithfully observe the Constitution of the Argentine Nation, and to cause it to be observed.’”).

40. *Id.* § 67, ¶ 15 (1853), available at <http://pdba.georgetown.edu/Constitutions/Argentina/arg1853.html#seccionprimeracap3>.

41. Corte Suprema de Justicia [CSJN], 9/2/1989, “Villacampa, Ignacio v. Almos de Villacampa, María Angélica,” Fallos (1989-312-122) (Arg.).



Regarding the reference to the “conversion of the Indians to Catholicism,” the Court used similar language to conclude that “it was done in order to ensure an adequate integration of these racial groups into a mostly-Catholic society.”<sup>42</sup> The Catholic Church, in the Report, requested the suppression of section 67, paragraph 15, due to its being offensive “to the indigenous people, to the Catholic Church, and also to the National Congress.”<sup>43</sup>

One of the most important reforms in the 1994 constitution was the elevation of certain international law documents, incorporating them into the constitution itself, and consequently granting them authority equal to the constitution.<sup>44</sup> The reform of 1994 reinforced the guarantee of religious freedom by conferring constitutional hierarchy “in the full force of their provisions” to key human rights conventions and declarations that govern religious freedom, expounding upon and clarifying their contents.<sup>45</sup> Article 75, Item 22, incorporates these international agreements into the Constitution, and specifically states they are to be understood as complementing the rights and guarantees to freely profess religion as recognized in the first part of the founding Constitution and still found in Article 1.<sup>46</sup> The 1994 amendment specifically states that the Constitution and any human rights documents incorporated into it are to be seen as supportive and explanatory of one another and not as contradictory.<sup>47</sup> Among these are the following United Nations instruments: the Universal Declaration of Human Rights (1948),<sup>48</sup> the Convention on the Prevention and Punishment of the Crime of Genocide (1948),<sup>49</sup> the International Convention on the Elimination

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42. *Id.*

43. *Id.*

44. CONST. ARG. § 75, ¶ 22.

45. *Id.*

46. *Id.*

47. Jason Morgan-Foster, Note, *The Relationship of IMF Structural Adjustment Programs to Economic, Social, and Cultural Rights: The Argentine Case Revisited*, 24 MICH. J. INT’L L. 577, 593 (2003) (citing Corte Suprema de Justicia [CSJN], 27/12/1996, “Chocobar Sixto Celestial v. Caja Nacional de Provisión para el Personal del Estado y Servicios Públicos,” Fallos (1996-319-3241) (Arg.)).

48. Universal Declaration of Human Rights, G.A. Res. 217A, art. 1, U.N. GAOR, 3d Sess., 1st plen. mtg., U.N. Doc A/810 (Dec. 12, 1948).

49. Convention on the Prevention and Punishment of the Crime of Genocide, *opened for signature* Dec. 9, 1948, 78 U.N.T.S. 277.

of All Forms of Racial Discrimination (1965),<sup>50</sup> the International Covenant on Civil and Political Rights (1966),<sup>51</sup> the International Covenant on Economic, Social and Cultural Rights (1966),<sup>52</sup> and the Convention on the Rights of the Child (1989).<sup>53</sup> There is also the Convention on the Elimination of All Forms of Discrimination against Women (1979),<sup>54</sup> and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment (1984).<sup>55</sup> The reforms also allowed other international law documents to be given constitutional hierarchy if, after a preliminary endorsement by the Argentine National Congress, they are approved by both branches of Congress by a two-thirds vote.<sup>56</sup> Later, in 2003, the National Congress exercised this power by elevating the Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity (1969)<sup>57</sup> to constitutional hierarchy.<sup>58</sup> After incorporation into the Constitution, these instruments can only be denounced by the National Executive Power “after the approval of two-thirds of all the members of each House.”<sup>59</sup>

On a regional level, the American Declaration of the Rights and Duties of Man (1948),<sup>60</sup> the American Convention on Human Rights—Pact of San José, Costa Rica (1969),<sup>61</sup> and the Inter-American Convention on the Forced Disappearance of Persons

50. International Convention on the Elimination of All Forms of Racial Discrimination, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195.

51. International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

52. International Covenant on Economic, Social and Cultural Rights, Dec. 16, 1966, 993 U.N.T.S. 3.

53. Convention on the Rights of the Child, Nov. 20, 1989, 1577 U.N.T.S. 3.

54. Convention on the Elimination of All Forms of Discrimination Against Women, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S. 13.

55. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85.

56. CONST. ARG. § 75, ¶ 22; *see also* Morgan-Foster, *supra* note 47, at 592–93.

57. Convention on the Non-Applicability of Statutory Limitations to War Crimes and Crimes Against Humanity, Nov. 26, 1968, 754 U.N.T.S. 73.

58. Law No. 24584, Nov. 29, 1995 [28281] B.O. 1.

59. CONST. ARG. § 74, ¶ 22.

60. American Declaration of the Rights and Duties of Man, O.A.S. Res. XXX, adopted by the Ninth International Conference of American States (1948), *reprinted in* Basic Documents Pertaining to Human Rights in the Inter-American System, OEA/Ser.L.V/II.82 doc.6 rev.1, at 17 (1992).

61. American Convention on Human Rights “Pact of San José, Costa Rica,” Nov. 22, 1969, 1144 U.N.T.S. 123.

(1994)<sup>62</sup> also have constitutional hierarchy.<sup>63</sup> The Magna Carta and other indicated international documents make up what is commonly referred to as the “bloc of federal constitutionality.”<sup>64</sup>

In his report after a visit to the country in 2001, United Nations Special Rapporteur on Freedom of Religion or Belief (“the Report”), Abdelfattah Amor, expressed his satisfaction at “Argentina’s accession to most of the international human rights instruments—in fact all the instruments relating to freedom of religion and belief—and the fact that it has incorporated them into the Constitution, with the status that entails.”<sup>65</sup>

The reforms of 1994 also granted precedence over common laws to those treaties that don’t enjoy constitutional hierarchy.<sup>66</sup> This means that while treaties not incorporated into the Constitution may be superseded by the Constitution, absent a constitutional provision—or positive law from Congress—the unincorporated treaties are binding on the courts. The following are examples of universal and regional instruments that have been ratified by Argentina and supersede the common law: the Geneva Conventions (1949),<sup>67</sup> the Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict (UNESCO, 1954),<sup>68</sup> the Abolition of Forced Labour Convention,<sup>69</sup> the Discrimination (Employment and Occupation) Convention,<sup>70</sup> the Convention

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62. Inter-American Convention on the Forced Disappearance of Persons, *adopted* June 9, 1994, 33 I.L.M. 1529.

63. CONST. ARG. § 75, ¶ 22; Law No. 24820, May 29, 1997 [28657] B.O. 1; Law No. 23054, Mar. 3, 1984 [25394] B.O. 1.

64. See F. LUCHAIRE, LE CONSEIL CONSTITUTIONNEL 179–83 (1980).

65. Civil and Political Rights, Including the Question of Religious Intolerance: Report, ¶ 121, U.N. Doc. E/CN.4/2002/73/Add.1 (Jan. 16, 2002) [hereinafter Report].

66. CONST. ARG. § 75, ¶ 22.

67. Geneva Convention Relative to the Protection of Civilian Persons in Time of War, Aug. 12, 1949, 75 U.N.T.S. 287, *ratification by Argentina effective* Mar. 18, 1957; Geneva Convention Relative to the Treatment of Prisoners of War, Aug. 12, 1949, 75 U.N.T.S. 135, *ratification by Argentina effective* Mar. 18, 1957.

68. Hague Convention for the Protection of Cultural Property in the Event of Armed Conflict, *open for signature* May 14, 1954, 249 U.N.T.S. 215, *accession by Argentina effective* June 22, 1989.

69. Convention Concerning the Abolition of Forced Labour, June 25, 1957, 320 U.N.T.S. 291, *ratification by Argentina effective* Jan. 18, 1961.

70. Convention Concerning Discrimination in Respect of Employment and Occupation, June 25, 1958, 362 U.N.T.S. 31, *ratification by Argentina effective* June 18, 1969.

against Discrimination in Education (UNESCO, 1960),<sup>71</sup> the Vienna Convention on Diplomatic Relations (1961),<sup>72</sup> the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property,<sup>73</sup> the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights—"Protocol of San Salvador"<sup>74</sup> (1988), the Convention on Stolen or Illegally Exported Cultural Objects (UNIDROIT, 1995),<sup>75</sup> the Rome Statute of the International Criminal Court (1998),<sup>76</sup> the Inter-American Convention against Terrorism (OAS, 2002),<sup>77</sup> the Convention for the Safeguarding of the Intangible Cultural Heritage (UNESCO, 2003),<sup>78</sup> and the *Protocolo Constitutivo del Parlamento del MERCOSUR* (2005) [Protocol Establishing the Parliament of MERCOSUR].<sup>79</sup>

Faced with this constitutionally designed scenario, does religious freedom exist and thrive when the constitutional text itself grants privileged status to the Catholic Church? The answer clearly is yes. In particular, as the United Nations Organization has stated, the connection of privilege between the State and a particular religion is not "in and of itself" contrary to human rights.<sup>80</sup> If, however, that

71. Convention Against Discrimination in Education, Nov. 14, 1960, 429 U.N.T.S. 93, *ratification by Argentina effective* Jan. 30, 1964.

72. Vienna Convention on Diplomatic Relations, Apr. 18, 1961, 500 U.N.T.S. 95, *ratification by Argentina effective* Oct. 10, 1963.

73. Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property, 14 Nov. 1970, 823 U.N.T.S. 231, *ratification by Argentina effective* Apr. 11, 1973.

74. Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights (Protocol of San Salvador), *opened for signature* Nov. 17, 1988, O.A.S.T.S. No. 69, *ratification by Argentina effective* June 30, 2003.

75. Convention on Stolen or Illegally Exported Cultural Objects, *opened for signature* June 24, 1995, 34 I.L.M. 1322, *ratification by Argentina* Feb. 1, 2002.

76. Rome Statute of the International Criminal Court, July 17, 1998, 2187 U.N.T.S. 90, *ratification by Argentina effective* Feb. 8, 2001.

77. Inter-American Convention Against Terrorism, June 3, 2002, 42 I.L.M. 19, *ratification by Argentina* July 18, 2005.

78. Convention for the Safeguarding of the Intangible Cultural Heritage, Oct. 17, 2003, UNESCO Doc. MISC/2003/CLT/CH/14, *ratification by Argentina effective* Nov. 9, 2006.

79. PROTOCOLO CONSTITUTIVO DEL PARLAMENTO DEL MERCOSUR, *available at* [http://www.mercosursocialsolidario.org/images/stories/oficial/documentos/protocolo\\_constitutivo\\_mercosur.pdf](http://www.mercosursocialsolidario.org/images/stories/oficial/documentos/protocolo_constitutivo_mercosur.pdf).

80. Human Rights Committee General Comment No. 22 (48) (art. 18), U.N. GAOR, 48th Sess., Supp. No. 40, at 209, 210, U.N. Doc. A/48/40 (Oct. 7, 1993) ("The fact that a

particular religion were to exploit its privileged status to impinge upon the rights of other religious communities or to discriminate against those of another faith, such conduct would be inimical to human rights.

In Argentina this has not happened. Non-Catholic religions in Argentina have been able to develop without problems—other than what is required in order to justify their legal status, as discussed below—and Argentines can freely profess their religious beliefs. Moreover, the reform of 1994 abolished several religious restrictions, including the requirement that the president of Argentina be Catholic.<sup>81</sup>

What all of this means is that, with only a few small exceptions, Argentina has countenanced no major religious conflicts or discrimination in more than 150 years of nationhood, including prejudice of the Catholic Church. Indeed, the special status given to the Catholic Church under the Constitution does not in and of itself create a detriment to the rights of other religions, but merely translates, for example, into the fact that it has public legal personnel recognized by the Civil Code that have made agreements with the State (such as the one in 1996 that stripped the Patronato of its power, and that of 1957, put into effect in 1992, which created the Military Ordinariate), and which receive direct government financial subsidies. These concessions themselves do not create a detriment to the rights of other religions since the Constitution justifiably regulated the form in which the “question of religion” was asked, based on historical foundations that justify the different treatment.<sup>82</sup> And so the Special Rapporteur, echoing the observations of the previously-mentioned Committee on Human Rights, said that “[f]rom the viewpoint of international law and jurisprudence in this

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religion is recognized as a State religion or that it is established as official or traditional or that its followers comprise the majority of the population shall not result in any impairment of the enjoyment of any of the rights under the Covenant, including articles 18 and 27, nor in any discrimination against adherents to other religions or non-believers.”).

81. See CONST. ARG. §§ 55, 89.

82. For example, the direct financing, as well as being an almost symbolic support that in definition complies with the constitutional mandate to “sustain the Catholic religion,” also recognizes historical arguments that are applicable only to the Catholic Church. CONST. ARG. § 2; see Octavio Lo Prete, *La Financiación Estatal de las Confesiones Religiosas* [State Financing of Religions], in *LA LIBERTAD RELIGIOSA EN ESPAÑA Y ARGENTINA* [Religious Freedom in Spain and Argentina] 271, 285 (Isidoro Martín Sánchez & Juan Navarro Floria eds., 2006).

field, the status of the Catholic Church as enshrined in the Constitution is not called into question.”<sup>83</sup>

Notwithstanding the insubstantial subsidies provided to the Catholic Church, the Argentine government provides a multitude of benefits that apply to all religions equally. For example, tax benefits, which are a much more important and far-reaching mode of government support for religions, are equally available for all churches and religious communities. Moreover, other government subsidies—including access to the media, ability to establish schools or universities, permission to declare holy days, and permission to have a religious presence in medical centers and jails—are all freely available to all religions.

Despite the government’s unflagging support, some non-Catholic religious communities repeatedly have demanded religious “equality.” On this point, it seems necessary to make a distinction between the different facets of religious freedom.

On an individual level, basic human dignity demands recognition of the rights of all people on an even footing, independent of the religious beliefs they hold. To that end, Argentina’s Anti-Discrimination Law of 1988 established special legal protections against religiously-motivated acts of discrimination.<sup>84</sup> Discrimination based on religious motivation—for example, having to belong to a particular religion in order to hold a public office—would not pass the test of reasonability demanded by the practice of jurisprudence.

The collective or communal body of religious freedom, on the other hand, takes on an added dimension. Here, the principle of “absolute” or “arithmetic” equality clearly is incompatible with liberty and justice.<sup>85</sup> This is in line with the concept of “equality” invariably upheld by Argentina’s National Supreme Court of Justice

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83. Report, *supra* note 65, ¶ 153. The official followed up these comments, however, by saying that “a number of steps should be taken to ensure wholly equal treatment of all communities of religion or belief.” *Id.*

84. Law No. 23592, July 23, 1988 [26458] B.O. 1. The Special Rapporteur reported that “[t]he legislation which directly or indirectly governs freedom of religion or belief explicitly or implicitly enshrines the principles of tolerance and non-discrimination, which are the foundations of the 1981 Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief.” Report, *supra* note 65, ¶ 124.

85. See Juan Navarro Floria, *Los Desafíos de la Libertad Religiosa* [The Challenges of Religious Freedom], Presentation at the International Congress “Religious Liberty: Origin of All Liberties” organized in Buenos Aires by CALIR (Apr. 28, 2008), available at <http://www.calir.org.ar/congreso/documentos/NAVARRO.FLORIA.pdf>.

(which is modeled after the jurisprudence of the United States Supreme Court): “equal treatment to equals in equal circumstances.” That is, Argentina cannot exclude from one that which, in equal circumstances, is given to others.

But this equality does not mean that religions cannot be considered differently in different situations, as long as those distinctions are not arbitrary or unreasonable. Indeed, different legal treatment is not necessarily discriminatory, nor does it violate constitutional rights, since factual inequalities sometimes justify unequal treatment.

Of course, the Argentine government must be very careful and adequately substantiate different treatment given to different religions. Recognizing the complexity that this challenge entails, reasonable points should be sought out so that each religion can be treated according to what it represents in historical, cultural, sociological or analogous terms, while avoiding conceding to one religion that which is denied another religion in similar circumstances. That is, differential treatment should not be used to the detriment of the rights of other religious communities or used for legal discriminations against those who belong to a different religion.

Finally, this constitutional model has allowed Argentina to be a model in matters of cultural integration and religious coexistence, and the dialogues of different religions have been ever more profound and productive. Argentina is an example to follow based on the high level of importance given to the development of peaceful coexistence.

### III. THE NATIONAL SUPREME COURT OF JUSTICE ON HUMAN RIGHTS TREATIES

Argentina is a signatory to the principle treaties on human rights which encompass a more extensive protection of religious freedom than what is established in the Argentine Constitution. It is therefore necessary to, even in a synthetic way, expound on how the Supreme Court has interpreted the hierarchal relationship between the treaties and State law, as well as in what way the jurisprudence of the enforcing bodies of the international instruments should be received, especially since 1994, when the most significant human rights treaties were given constitutional hierarchy.

It should be noted first that in 1992, the highest Tribunal determined, in the *Ekmekdjian*<sup>86</sup> verdict, that these treaties prevail over internal law, a principle that stems from the Vienna Convention on the Law of Treaties, which established that a State party “may not invoke the provisions of its internal law as justification for its failure to perform a treaty.”<sup>87</sup>

*A. Judicial Treatment of Treaties Pursuant to the Argentine Constitution*

The drafters of the 1994 Constitution incorporated the Vienna internal law doctrine into the constitutional reforms of 1994, by prescribing that treaties “have a higher hierarchy than laws.”<sup>88</sup> Further, the Article conferred constitutional hierarchy on specific human rights instruments, which, in effect, created two categories of treaties: “ordinary” treaties, and those that receive preferential constitutional treatment.<sup>89</sup>

While ordinary treaties still rank higher than the law, they are still subject to the Constitution. Section 27 of the Argentine National Constitution demands that all treaties be in accordance with the “principles of public law laid down by [the] Constitution.”<sup>90</sup> In 1993, the Supreme Court held that the Vienna Convention grants priority to the treaties in the case of a conflict with a contrary

86. Corte Suprema de Justicia [CSJN], 07/07/1992, “Ekmekdjian, Miguel v. Sofovich,” Fallos (1992-315-1492) (Arg.).

87. Vienna Convention on the Law of Treaties art. 27, May 23, 1969, 1155 U.N.T.S. 331. The Convention was ratified by the Argentine Republic in 1972 and entered into force on January 27, 1980. Law No. 19865, Oct. 3, 1972, [XXXII-D] A.D.L.A. 6412. The Supreme Court expressed, in the cited verdict, that the Convention “has altered the situation of the Argentine legal code” in part because the application of Article 27 “imposes upon Argentine governmental bodies to assign priority to the treaty in the case of an eventual conflict with internal laws, or with the omission of dictating provisions that, in their effects, equate to the failure to fulfill the international treaty according to the terms of the cited Article 27.” Corte Suprema de Justicia [CSJN], 07/07/1992, “Ekmekdjian, Miguel v. Sofovich,” Fallos (1992-315-1492) (Arg.). This last part implies that the verdict acknowledged operability to the rights encompassed in the international instruments. *Ekmekdjian* was also relevant because it advanced a criterion later developed, by establishing that the interpretation of the Covenant be guided by the jurisprudence of the Inter-American Court of Human Rights. *Id.*

88. CONST. ARG. § 75, ¶ 22.

89. The Argentine National Constitution refers to these treaties as having a “constitutional hierarchy.” *Id.*

90. CONST. ARG. § 27.



internal law, as long as they are in accordance with the constitutional “principles of public law.”<sup>91</sup>

Certain human rights treaties are specifically mentioned in the seventy-fifth section of the Argentine National Constitution and receive a higher status in the Argentine legal hierarchy than ordinary law (“Section 75 treaties”).<sup>92</sup> The language of the Constitution, however, has led to various interpretive difficulties, because while the Constitution ratified these specific treaties “in the full force of their provisions,” it also provides that the treaties “do not repeal any section of the First Part of this Constitution” and that they “are to be understood as complementing the rights and guarantees recognized [t]herein.”<sup>93</sup>

Logically, the interaction of such precepts is decisive when trying to determine the scope of the treaties, and of the rights that are encompassed in them, so that we can definitively know (1) the relationship between Section 75 treaties and the Constitution itself, and (2) the value that should be assigned to the body of law stemming from the organizations and tribunals established by these treaties.

### *1. Applying the protections of the Section 75 treaties*

Initially, we encounter the question of how to resolve possible conflicts of rights; that is, which has supremacy: the Section 75 treaties or the Constitution? The majority of courts give treaties that have constitutional hierarchy the same deference as the Constitution. And while there is an influential minority view that Section 75

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91. Corte Suprema de Justicia [CSJN], 7/7/1993, “Fibrica Constructora SCA. v. Comisión Técnica Mixta de Salto Grande,” Fallos (1993-316-1669) (Arg.).

92. See CONST. ARG. § 75, ¶ 22. The Paragraph specifically mentions the following treaties: “The American Declaration of the Rights and Duties of Man; the Universal Declaration of Human Rights; the American Convention on Human Rights; the International Pact on Economic, Social and Cultural Rights; the International Pact on Civil and Political Rights and its empowering Protocol; the Convention on the Prevention and Punishment of Genocide; the International Convention on the Elimination of all Forms of Racial Discrimination; the Convention on the Elimination of all Forms of Discrimination against Women; the Convention against Torture and other Cruel, Inhuman or Degrading Treatments or Punishments; [and] the Convention of the Rights of the Child . . .” *Id.*

93. *Id.* Law 24.309, which declared the need for constitutional reform, established in Article 7 that the Constitutional Convention could not “introduce any modification to the Declarations, Rights and Guarantees contained in Chapter One of the First Part of the National Constitution.” Law No. 24309, Dec. 29, 1993, [1994-A] A.D.L.A. at 1.

treaties do not receive constitutional deference, as a whole, Argentine law is shifting away from that approach.

*a. Minority view.* Judge Belluscio, in the *Petric* ruling, indicated that the treaties mentioned in Article 75, Paragraph 22, make up constitutional rules of second rank; they prevail over ordinary laws, but are valid only to the extent in which they do not affect the rights enshrined in the First Part of the Constitution.<sup>94</sup> This doctrine was reiterated in the *Arancibia Clavel* case.<sup>95</sup> In that ruling, Judge Fayt alluded to the categorization of the treaties listed in Article 75, Paragraph 22, as “second rank,” demanding an unavoidable verification of their agreement with those rights and guarantees which the Court, in its custody and final interpretation of the Constitution, has the right to safeguard.<sup>96</sup>

*b. Majority view.* While there have been votes for giving the Constitution superiority over treaties, the majority of judges have interpreted the formula used by the Constituent Assembly of 1994 as a definitive judgment on the compatibility between treaties and the Constitution that cannot be judicially revised. Thus, it is the function of the Judicial Power, in every concrete case, to harmonize the applicable provisions of a preferential treaty with those of the Constitution.<sup>97</sup>

Paragraph 22 of Section 75 states that the treaties “are to be understood as complementing the rights and guarantees recognized” by the Constitution.<sup>98</sup> This complementary nature has been understood as a *plus* that gives the declarations an internal order, with either the Constitution or the treaties prevailing, depending on whichever gives the greatest protection.<sup>99</sup> The Supreme Court reiterated this point in *Monges*, stipulating that “the constitutional

94. Corte Suprema de Justicia [CSJN], 16/4/1998, “Petric, Domagoj Antonio c/ diario,” Fallos (1998-321-885) (Arg.).

95. Corte Suprema de Justicia [CSJN], 24/8/2004, “Arancibia Clavel, Enrique Lautaro y otros,” Fallos (2004-327-3294) (Arg.).

96. *Id.*

97. *See, e.g.*, Corte Suprema de Justicia [CSJN], 29/9/1998, “Cancela,” Fallos (1998-321-2637) (Arg.); Corte Suprema de Justicia [CSJN], 27/12/1996, “Chocobar, Sixto Celestial v. Caja Nacional de Provisión para el Personal del Estado y Servicios Públicos,” Fallos (1996-319-3241) (Arg.).

98. CONST. ARG. § 75, ¶ 22.

99. Gelli, María Angélica, *Constitución de la Nación Argentina, Comentada y Concordada* [Constitution of the Argentine Nation, Commentary and Agreements], in 2 LA LEY 227 (4th ed. expanded 2008).

clauses and those of the treaties have the same hierarchy, are complementary, and therefore, cannot displace or destroy the other.”<sup>100</sup>

Further, the constitutional phrase, “in the full force of their provisions” has been interpreted to mean not only the method by which the treaties were approved and ratified by the Republic of Argentina (i.e., the requirement that a treaty is not to be ratified with a reservation that is “incompatible with the object and purpose of the treaty”),<sup>101</sup> but also the interpretive reach given to the clauses of the treaty by the international legal system.<sup>102</sup>

*B. Effect of Decisions by International Courts on Argentine Jurisprudence*

Although the courts uphold the provisions found in preferential treaties, there is still the question of how to treat decisions that are not found directly in the treaty but are made by a body created by the treaty; that is, if a preferential treaty either creates an international court or authorizes an existing international court to hear a relevant case, what deference, if any, do the Argentine Courts give to those decisions?

Five of the ten listed Section 75 treaties explicitly authorize an international court to try disputes resulting from a breach of the applicable treaty. The American Convention on Human Rights created the Inter-American Court of Human Rights.<sup>103</sup> The other

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100. Corte Suprema de Justicia [CSJN], 26/12/1996, “Monges, Analía M. v. Universidad de Buenos Aires,” Fallos (1996-319-3148) (Arg.).

101. Vienna Convention on the Law of Treaties art. 19, May 23, 1969, 1155 U.N.T.S. 331 (stating that a reservation may not strip a treaty of its original purpose). Argentina has approved, with reservations and/or declarations, the Convention on the Prevention and Punishment of the Crime of Genocide, the American Convention on Human Rights, the International Covenant on Civil and Political Rights, and the Convention on the Rights of the Child. *See* Law No. 6286/56, Apr. 9, 1956, [XVI-A] A.D.L.A. 273; Law No. 23054, Mar. 1, 1984, [25394] B.O. 1; Law No. 23313, Apr. 17, 1986, [25928] B.O. 1; Law No.23849, Sept. 27, 1990, [26993] B.O. 1.

102. Gelli, *supra* note 99, at 221.

103. American Convention on Human Rights, art. 33, Nov. 22, 1969, 1144 U.N.T.S. 123 (“The following [organizations] shall have competence with respect to matters relating to the fulfillment of the commitments made by the States Parties to this Convention: . . . [t]he Inter-American Court of Human Rights . . .”).

four pertinent treaties authorize the International Court of Justice to hear disputes.<sup>104</sup>

*1. Judicial decisions promulgated by international courts*

In the *Giroldi* ruling in 1995, the Supreme Court ruled that the constitutional hierarchy of the American Convention on Human Rights was established by the express will of the Constituent Assembly in the full force of its provisions; “that the Convention is valid in the international sphere *and particularly considering its effective legal application by the international courts through their interpretation and application.*”<sup>105</sup>

When Argentina approved the American Convention on Human Rights (Pact of San Jose, Costa Rica) in 1984, it recognized “the competence of the Inter-American Commission on Human Rights and on the jurisdiction of the Inter-American Court of Human Rights . . . for an indeterminate period and on condition of reciprocity on all cases related to the interpretation or application of

104. Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, art. 30, ¶ 1, *opened for signature* Dec. 10, 1984, 1465 U.N.T.S. 85 (“Any dispute between two or more States Parties concerning the interpretation or application of this Convention which cannot be settled through negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the Parties are unable to agree on the organization of the arbitration, any one of those Parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.”); Convention on the Elimination of All Forms of Discrimination Against Women, art. 29, ¶ 1, *opened for signature* Dec. 18, 1979, 1249 U.N.T.S.13 (“Any dispute between two or more States Parties concerning the interpretation or application of the present Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by request in conformity with the Statute of the Court.”); International Convention on the Elimination of All Forms of Racial Discrimination, art. 22, *opened for signature* Dec. 21, 1965, 660 U.N.T.S. 195 (“Any dispute between two or more States Parties with respect to the interpretation or application of this Convention, which is not settled by negotiation or by the procedures expressly provided for in this Convention, shall, at the request of any of the parties to the dispute, be referred to the International Court of Justice for decision, unless the disputants agree to another mode of settlement.”); Convention on the Prevention and Punishment of the Crime of Genocide, art. 9, *opened for signature* Dec. 9, 1948, 78 U.N.T.S. 277 (“Disputes between the Contracting Parties relating to the interpretation, application or fulfillment of the present Convention, including those relating to the responsibility of a State for genocide or for any of the other of the acts enumerated in article III, shall be submitted to the International Court of Justice at the request of any of the parties to the dispute.”).

105. Corte Suprema de Justicia [CSJN], 7/4/1995, “Giroldi, Horacio David y otro / recurso de casación,” Fallos (1995-318-514) (Arg.) (emphasis added).

the Convention cited.”<sup>106</sup> The *Giroldi* ruling agreed with this interpretation pointing out that “the cited jurisprudence should serve as a guide for the interpretation of the convention precepts in the manner in which the Argentine State recognizes the competence of the Inter-American court in all cases relative to its interpretation and application of the American Convention.”<sup>107</sup>

In *Arancibia Clavel*, Judge Boggiano reiterated this deferential doctrine by holding that the treaties “must be applied in Argentina just like they function in the international sphere, including the international jurisprudence relative to those treaties and the rules of customary international law as complemented by the pertinent international practice,” adding in his vote that the signatory countries, among them Argentina, “have greatly reduced the scope of their respective internal jurisprudence by way of agreement with many treaties and declarations on human rights and by participating in the formation of a delineated body of international customary law regarding human rights.”<sup>108</sup>

In 2007, the Supreme Court of Argentina clarified the international doctrine: “[T]he Judiciary . . . must exercise a type of ‘conventionality control’ between the domestic legal provisions, applied to specific cases, and the American Convention on Human Rights,” and the Court must keep in mind “not only the treaty, but also the interpretation of the same as made by the Inter-American Court, the highest interpreter of the American Convention.”<sup>109</sup>

## 2. *Advisory opinions issued by international administrative bodies*

While courts must give deference to applicable international courts, there is still the question of how to treat promulgations made by international administrative bodies. The Supreme Court, in their *Bramajo* ruling, stated that the advisory opinions and recommendations of the Inter-American Commission on Human Rights must also serve as an “interpretation guide” for the precepts

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106. Law No. 23054, Mar. 19, 1984, [25394] B.O. 1.

107. Corte Suprema de Justicia [CSJN], 7/4/1995, “Giroldi, Horacio David y otro / recurso de casación,” Fallos (1995-318-514) (Arg.).

108. Corte Suprema de Justicia [CSJN], 24/8/2004, “Arancibia Clavel, Enrique Lautaro y otros,” Fallos (2004-327-3294) (Arg.).

109. Corte Suprema de Justicia [CSJN], 13/7/2007, “Mazzeo, Julio Lilo y otros,” Fallos (2007-330-3248) (Arg.).

of the American Convention.<sup>110</sup> Two years later, however, the Court limited the reach of advisory opinions, indicating that while the State must make all necessary efforts to give a favorable response to the Commission's recommendations, "this is not equivalent to establishing as a must that judges give compliance to its content by not dealing with decisions that are reserved for the Judiciary."<sup>111</sup>

In summary, the Argentine legal system is going through a period of redefinitions and transformations. The generally expressed characteristics show that the National Supreme Court of Justice has set out in recent years on a path towards the functionality and obligations of international law governing human rights, clearing up the interpretations made by the respective enforcing bodies, principally the Inter-American Court of Human Rights.

#### IV. CONCLUSIONS AND CHALLENGES

The status of religious freedom, as guaranteed by Argentine law, is, in general terms, highly satisfactory.<sup>112</sup> Religions can perform their work without inconveniences and we see very few cases of discrimination based on religion. Those few cases that have surfaced have been isolated cases and in the majority of cases have been satisfactorily resolved.

In the previously-mentioned report, the U.N. Special Rapporteur underlined that not only do the "federal and provincial constitutional provisions guarantee freedom of religion and belief and freedom to manifest religion or belief in accordance with relevant international law," but also that, in general terms, "Argentine legislation furnishes solid constitutional foundations and important legal guidelines to guarantee freedom of religions and belief," and that "the State's policy generally embodies respect for freedom of religion or belief and freedom to manifest religion or

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110. Corte Suprema de Justicia [CSJN], 12/9/1996, "Bramajo, Hernan de Javier," Fallos (1996-319-1840) (Arg.).

111. Corte Suprema de Justicia [CSJN], 22/12/1998, "Acosta, Claudia Beatriz y otros," Fallos (1998-321-3555) (Arg.).

112. We should remember that in 1989, the Supreme Court, in partially allowing a case of conscientious objection to obligatory military service, demonstrated that religious freedom is "particularly valuable" and that humanity has achieved it "thanks to many efforts and tribulations" (Consideration 8, Majority Vote). See Rulings 312:496 (Law 1989-C, 405; The Law 133:365).

belief, in keeping with international human rights standards in this field.”<sup>113</sup>

Argentina has ratified the principle international instruments that protect and prescribe the scope of religious freedom, and has even given them a substantial elevation by granting them constitution hierarchy in the reform of 1994.<sup>114</sup> Adding to this is the interpretative path which the Supreme Court has been treading, which has been favorable to the reception of the opinion and jurisprudence that the transnational courts and organizations carry out in the application of treaties.

In any case, we understand that in order to further the validity of religious freedom, we must face the following challenges:

Sanctioning a law that will set forth the standards of religious freedom in their widest interpretation possible, extended to both individuals and religious communities, and granting at the same time to non-Catholic religions a legal status more in line with their own uniqueness.<sup>115</sup>

Consolidating policies in order to increase the understanding and importance given to religious freedom as a fundamental right, especially in education.<sup>116</sup>

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113. See Report, *supra* note 65, ¶¶ 118, 128, 130. The Rapporteur added in this last point that, “[t]he authorities permit the practice of religion, the construction of places of worship, religious education and, in fact, apart from special situations and cases, the expression of all manifestations of freedom of religion.” He goes on to say that “the State grants public funds to a variety of religious communities, but the predominant Catholic Church and religious minorities,” and that, “[i]n general, the State does not interfere in the internal affairs of communities of religion and belief,” and that “[i]t is very active in dialogue and cooperation with religious communities.” *Id.* ¶ 130.

114. This reform also struck down the requirement that the president be Catholic, and eliminated all of the regulations of the Patronato (which had not been in effect since the Agreement between the Argentine Republic and the Holy See in 1966) and gave way to the consolidation of the principle of non-discrimination, establishing that the swearing in of the president and vice-president be performed according to their own religious beliefs. CONST. ARG. § 93.

115. At the time of this writing, the Secretary of Worship is elaborating on a new draft legislation that will incorporate previous proposals, among them the draft bill by the Argentine Council on Religious Freedom (CALIR).

116. Take, for example, the “inter-religious pledge of allegiance to the flag” that every year reunites students from public schools and private schools (both religious and lay), with the objective of strengthening the values of peaceful coexistence. The initiative, created by the Institute for Inter-Religious Dialogue and the Christian Youth Association, together with the Secretary of Worship, is complemented by various activities held in the separate schools with parents, docents, and students. See Press Release, Ministerio de Relaciones Exteriores Comercio Internacional y Culto (Arg.), Press Release No. 225/07 (on file with author).

Authoring cooperative agreements between the State and various religious entities on matters of mutual interest.

Protecting, including through reforms of penal legislation, religious feelings from offense or ridicule of sacred dogmas, things or places.

Expanding the recognition of the right to conscientious objection, and extending its scope.

Condemning expressions that seek to nullify the opinion of, or even reject the public participation of, religions in matters of common interest.



